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ENDORSED
FILED
San Francisco County Superior Court

MAY - 2 2003
GORDON PARK-LI, Clerk
BY: ANDREA CARNEY
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

ANA MORALES, et al., etc.,

Plaintiffs,

vs.

CITIGROUP INC.; et al.,

Defendants

Judicial Council Coordination
Proceeding No. 4197

ORDER CERTIFYING SETTLEMENT
CLASS, APPROVING CLASS ACTION
SETTLEMENT, AND AWARDED
ATTORNEY FEES

Dept.: 304
Honorable Richard A. Kramer

Plaintiffs' motion for an order for Final Approval of the Settlement Stipulation,
Certification of a Nationwide Class for settlement purposes only, and Application for Attorneys'
Fees and Expenses duly came on for hearing at 9:30 a.m. on February 27, 2003 and April 23, 2003
before the Honorable Richard A. Kramer. Appearances were made on behalf of both plaintiffs
and defendants. Defendants joined in Plaintiffs' motions for an order granting Final Approval of

1 the Settlement Stipulation and Certification of a Nationwide Class for settlement purposes only.
2 Appearances were also made by various class members or their attorneys in opposition to the
3 motions.

4 I. FINDINGS

5 The Court has carefully reviewed the parties' and objectors' written submissions and
6 considered the oral and written arguments on the motions. Based thereon, the Court makes the
7 following findings of fact:

8 A. Context of the Action

9 1. Five separate class actions filed in California state courts have been coordinated in
10 this proceeding. Plaintiffs in the coordinated actions filed a Consolidated Amended Class Action
11 Complaint on February 21, 2002. On October 24, 2002, plaintiffs filed a Second Amended
12 Consolidated Class Action Complaint in the coordinated actions, alleging two nationwide
13 subclasses. The complaints in the coordinated cases allege claims regarding defendants' sale of
14 credit insurance in connection with loans secured by real or personal property and regarding
15 defendants' refinancing of loans secured by real property.

16 2. In the action entitled *Federal Trade Commission v. Citigroup Inc., et al.*, No. 1:01-
17 CV-00606 in the United States District Court for the Northern District of Georgia ("FTC
18 Action"), the Federal Trade Commission sued defendants also alleging claims regarding
19 defendants' sale of credit insurance in connection with loans secured by real or personal property.
20 Defendants have tentatively settled the FTC Action. That settlement will become effective only if
21 this Court enters an order certifying a nationwide class and finally approving the proposed
22 settlement of this coordinated proceeding.

23 3. A number of other individual and putative class actions alleging similar claims
24 have been filed against defendants in other courts. Under the terms of the proposed settlement of
25 this case, several of those other actions will be voluntarily dismissed by the plaintiffs.

26 4. On November 15, 2002, this Court entered its Order Preliminarily Approving Class
27 Action Settlement and Certifying Nationwide Settlement Class ("Preliminary Approval Order")

1 preliminarily approving the Stipulation of Settlement dated September 17, 2002.

2 **B. Class Certification**

3 5. This is a court of general jurisdiction, having subject matter jurisdiction over
4 plaintiffs' individual and class claims. (Cal. Const., art. VI, §10.) The Court has personal
5 jurisdiction over the named plaintiffs by consent and over the defendants by reason of their doing
6 business in California. It may and does constitutionally exercise personal jurisdiction over
7 members of the proposed nationwide subclasses even if they lack minimum contacts with
8 California. (*Phillips Petroleum Co. v. Shutts* (1985) 472 U.S. 797, 811-812.)

9 6. Each of the two nationwide subclasses certified by this order is ascertainable. The
10 members of each subclass can be identified from defendants' records. There are approximately
11 2.2 million borrowers in the credit insurance subclass and approximately 138,000 borrowers in the
12 refinance subclass. It would be impracticable to join so many borrowers as named parties.

13 7. The claims of the named plaintiffs are typical of the claims of members of the
14 proposed two nationwide subclasses. The named plaintiffs claim that they were improperly
15 induced to refinance loans and to purchase credit insurance in connection with their loans. The
16 named plaintiffs seek damages for these alleged wrongs. Members of the two proposed nation-
17 wide subclasses also obtained credit insurance and refinanced loans allegedly as a result of the
18 same pattern of improper inducements. Class members will benefit from the relief the named
19 plaintiffs seek on their behalf.

20 8. The named plaintiffs have adequately represented the class. Named plaintiffs'
21 interests do not diverge from those of subclass members. Named plaintiffs' counsel are nationally
22 recognized law firms with substantial experience in the prosecution of complex class actions
23 similar to these coordinated cases. The terms of the proposed settlement demonstrate that the
24 named plaintiffs and their counsel have adequately represented the interests of members of the
25 nationwide subclasses.

26 9. Common questions of law and fact predominate for purposes of settlement in this
27 consolidated proceeding. The Second Amended Consolidated Complaint alleges that defendants
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1 engaged in a common practice and method of doing business nationwide. For settlement
2 purposes, the Court considers whether the proposed Settlement Stipulation provides fair, adequate
3 and reasonable compensation for class members' claims arising from this allegedly common
4 practice and method of doing business. That common issue predominates for purposes of
5 settlement.

6 10. The Court need not determine which state's or states' laws govern subclass
7 members' claims. "[B]ecause the case [is] settling, protracted determinations of other states' laws
8 [are] unnecessary." (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1806.) Though
9 variations in applicable state laws might create predominant non-common questions were the case
10 to be tried as a nationwide class action, for settlement purposes it is sufficient to determine that
11 the Stipulation of Settlement provides adequate compensation for claims of all class members and
12 that non-California class members would not fare significantly better under their own states' laws.
13 (*Id.*, at p. 1807 n. 19.) Those two determinations are common questions which can be decided
14 without finally deciding which state laws govern class members' claims and without examining in
15 detail the variations among those applicable laws.

16 11. The Second Amended Consolidated Complaint alleges several common law claims
17 as well as claims under California consumer protection laws. While state laws may vary with
18 respect to these claims, they are relatively homogenous. No objector has suggested or shown that
19 there are any idiosyncratic differences between states' common law or consumer protection laws
20 that are sufficiently substantive to predominate over the common question of whether the
21 proposed settlement is fair and reasonable to the subclasses as a whole. (*Hanlon v. Chrysler*
22 *Corp.* (9th Cir. 1998) 150 F.3d 1012, 1022-1023.) Also, "California's consumer protection laws
23 are among the strongest in the country." (*Wershba v. Apple Computer, Inc.* (2001) 91
24 Cal.App.4th 224, 242.) By finding that the settlement provides fair, adequate and reasonable
25 compensation for California subclass members, the Court necessarily determines that the
26 settlement is fair, adequate and reasonable as to subclass members from other states.

27 12. For purposes of granting final approval of the Settlement Stipulation, the
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1 nationwide class is manageable.

2 13. Certification of a nationwide class for purposes of granting final approval of the
3 Stipulation of Settlement is the superior means of resolving the disputes between the parties.
4 Substantial benefits will accrue to both the litigants and the courts from maintaining the case as a
5 nationwide class action for that purpose. (*City of San Jose v. Superior Court* (1974) 12 Cal.3d
6 447, 464.) Certification will permit a single court to resolve claims now pending in other courts
7 and dispose, in one proceeding, of numerous claims arising out of the same or similar factual
8 circumstances. Certification will also facilitate consummation of the FTC settlement. None of
9 the objectors argued or attempted to show that individual litigation was a superior means of
10 resolving these claims. Resolution of all claims in this single proceeding offers substantial
11 benefits in contrast to continued litigation of multiple class actions in various state and federal
12 courts.

13 14. Defendants are not judicially estopped from joining plaintiffs in seeking
14 certification of the nationwide subclasses. Though defendants have opposed class certification of
15 similar claims in other cases, their positions have not been so clearly inconsistent that one
16 necessarily excludes the other. (*Jackson v. County of Los Angeles* (1997) 60 Cal.App.4th 171,
17 182.) Opposing certification in contested cases is not inconsistent with seeking certification for
18 settlement purposes only since litigation or settlement status may affect class certification criteria.
19 In any event, plaintiffs are not estopped, so the subclasses may be certified even if defendants
20 could not seek certification on their own.

21 C. Class Notice

22 15. The Court previously approved the notice which was sent to subclass members.
23 (Preliminary Approval Order, ¶D(14).) Having considered objectors' various arguments
24 regarding the notice, the Court again finds that the notice fairly and adequately informed class
25 members of the nature of the action, the terms of the proposed settlement, the effect of the action
26 and settlement on other actions raising similar claims, and class members' rights to exclude them-
27 selves from this action or object to the proposed settlement.

1 16. The requirements for opting out of the subclasses are stated with reasonable clarity
2 in the notice and were not overly complicated.

3 17. The notice adequately describes the benefits to be paid each of the two subclasses
4 as a whole. It also provides an example of how the amount to be paid to an individual subclass
5 member will be calculated. Given the nature of the settlement—i.e., fixed settlement funds to be
6 distributed pro rata to claimants—it would have been impossible to estimate accurately the actual
7 amount an individual subclass member will receive from the settlement or even to estimate a
8 meaningful range of potential individual recovery. Class members would not have been aided
9 substantially by additional information about settlement benefits, the FTC's role in determining
10 the distribution formula for benefits paid the credit insurance subclass, or the manner in which
11 notice costs and administrative fees will be allocated to the two settlement funds.

12 18. The notice adequately describes the relation of this case and its settlement to the
13 FTC Action and to several other pending cases involving similar claims. Adding further details
14 about the relationship of this settlement to the FTC settlement or regarding other individual or
15 class actions against defendants would unduly lengthen the notice without any substantially
16 greater benefit to subclass members.

17 19. The notice adequately discloses the nature and scope of the release provision of the
18 Stipulation of Settlement. It also adequately revealed that plaintiffs would seek an award of
19 attorney fees and costs as well as the amount they would request.

20 20. The distribution of class notice was mailed by first class mail to class members at
21 their last known addresses, and to their counsel, if known, by December 23, 2002. In addition, a
22 summary notice was published on December 24, 2002 and on December 31, 2002, in *USA Today*.
23 The deadline for opting out or objecting was February 7, 2003. There was an adequate interval
24 between notice and deadline to permit subclass members to choose what to do and act on their
25 decision.

26 **D. Fairness Of Settlement**

27 21. The Stipulation of Settlement is entitled to a presumption of fairness under the
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four-factor test set forth in *Dunk v. Ford Motor Co.*, *supra*, 48 Cal.App.4th at p. 1801.)

22. The Stipulation of Settlement was reached as the result of extensive arm's length negotiations between the parties with the help of experienced neutral mediators, the Honorable Eugene Lynch (Ret.) and the Honorable Daniel Weinstein (Ret.). No "reverse auction" was conducted in this case; instead, plaintiffs were represented by a coalition of highly experienced law firms that had pursued this and similar litigation against defendants for some years.

23. Sufficient investigation and discovery was accomplished to permit counsel and the court to act intelligently with respect to evaluating the proposed settlement.

24. The settlement is recommended by counsel for both parties. Plaintiffs' attorneys comprise a coalition of some of the most highly skilled and experienced law firms handling plaintiffs' consumer class actions. Plaintiffs' counsel are well able to evaluate the benefits and burdens of the proposed settlement in comparison with the potential recovery, complexity, risk and delay likely were the case to be litigated to a final conclusion.

25. Out of the approximately 2.2 million subclass members, comparatively few objected or opted out. There were only 12 written objections to the settlement. There were only approximately 12,000 valid opt-outs. This level of objection and opt-outs is sufficiently small to be deemed an indication of the subclass' acceptance of the settlement as fair and adequate. (*7-Eleven Owners for Fair Franchising v. Southland Group* (2000) 85 Cal.App.4th 1135, 1153.)

26. The FTC, plaintiffs' counsel, and defendants' counsel found the \$215 million credit insurance redress fund established by this settlement and the settlement in the FTC Action to be fair and adequate recompense for the claims of the credit insurance subclass. The Court agrees with this assessment. While subclass members might have received more if the case were litigated to a final conclusion, they might also have received less or nothing at all. The settlement takes into account the substantial litigation risk that the credit insurance subclass faced. A settlement may be approved as fair and reasonable even if it provides substantially less than 100% of the damages plaintiffs seek. (*Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th at p. 250.) The FTC's brief regarding the method of distributing the credit insurance redress fund shows that

1 subclass members who must cancel credit insurance currently in force in order to participate in the
2 settlement will be suitably compensated by settlement payments from the redress fund in amounts
3 equal to unearned premium refunds, after which all claimants will share in the remaining redress
4 funds pro rata.

5 27. The \$25 million refinance redress fund is also fair and adequate compensation for
6 the refinance subclass. On a pro rata basis, the fund provides this subclass greater benefits than
7 the credit insurance redress fund does. Plaintiffs faced substantial litigation risk with respect to
8 this subclass' claims and were without the FTC's assistance in prosecuting those claims. Contrary
9 to one objector's complaint, this fund will not pay administrative and notice costs attributable to
10 the credit insurance subclass.

11 28. The release provision of the Stipulation of Settlement is fair and reasonable. It
12 releases only claims for which the settlement provides compensation to class members. The FTC
13 settlement is contingent on approval of this settlement, so no additional compensation need be
14 paid under this settlement for the broader release in this action. Whether the release discharges
15 claims of bankrupt borrowers or their bankruptcy trustees is a question this Court need not
16 answer. Rather, that question will be decided by the courts, if any, in which claims are later
17 pursued by those borrowers or trustees. At the February 27, 2003 hearing, defendants stated that
18 the release does not apply to the Truth-in-Lending claim asserted by objectors Marc and Michelle
19 Livingston. Such Truth-in-Lending claims were never part of the release negotiated by the
20 parties.

21 29. The proposed methods of distributing the redress funds are fair to class members
22 and are not unduly burdensome. The Court retains jurisdiction over implementation of the
23 settlement so it can assure that the redress funds are distributed appropriately.

24 30. Compensation paid Arizona residents for credit life insurance purchased in
25 transactions consummated before the December 1, 1995 beginning of the nationwide subclass is
26 fair and reasonable given the fact that the settlement will result in dismissal of a pending Arizona
27 suit in which a class of Arizona borrowers has already been certified.

1 31. Attorneys' fees and costs in the amount of \$23 million is fair and reasonable. In
2 making this determination, the Court specifically finds that the following factors justify the fees
3 and cost application: (1) the magnitude of the litigation, including the complexity, scope, duration
4 and the fact the litigation was multistate, multijurisdictional and multifaceted, (2) plaintiffs'
5 attorneys are top notch, nationally recognized lawyers who have provided excellent representation
6 and pursued an extremely fair resolution, (3) the time submissions are reasonable given the level
7 of work involved and in light of the nature and the duration of the litigation, (4) the attorneys'
8 rates are reasonable and appropriate for attorneys of comparable skill and experience, (5) the fees
9 do not come from the class' recovery, but will be a separate payment in addition to the class relief,
10 (6) the mediators who recommended the fee and cost award as an appropriate amount are of the
11 highest quality, (7) the award is justified under a lodestar multiplier analysis, and the multiplier is
12 in accord with California law, (8) the award is justified under a percentage of the recovery
13 analysis and is well within a reasonable range, and (9) this case provided the foundation for the
14 FTC action and the FTC result was conditioned on settlement of this action. The court finds that
15 there is a strong interrelationship between the FTC action and this action.

16 32. Incentive awards totaling \$85,000 to those 17 plaintiffs listed in paragraph IV(F) of
17 the Stipulation of Settlement is fair and reasonable. This incentive award will be paid pursuant to
18 the Stipulation of Settlement, and shall be in addition to any recovery by the Settlement Class.
19 Incentive awards of \$5,000 each to the named plaintiffs in the Second Amended Consolidated
20 Class Action Complaint (except those who are already being compensated as part of the \$85,000
21 incentive award just mentioned) is also fair and reasonable. This incentive award will be paid
22 from the \$25 million refinance redress fund.

23 33. Taken as a whole, the Stipulation of Settlement is fair, adequate and in the best
24 interests of the settlement subclasses.

25 **E. Opt-Outs**

26 34. Attached hereto as Exhibit A are two declarations. The first is from Dennis A.
27 Gilardi, Jr. of Gilardi & Co. LLC, the settlement administrator. This declaration explains how
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1 each opt-out was received and processed. The second declaration is from CitiFinancial describing
2 how Exhibits B, C and D were compiled and attesting to the completeness and accuracy of those
3 exhibits.

4 35. Attached hereto as Exhibit B is a list of those class members who opted-out in a
5 timely fashion and whose identities could be ascertained to be class members.

6 36. Attached hereto as Exhibit C is a list of those purported class members who opted-
7 out in a timely fashion but whose identities could not be ascertained to be class members or whose
8 identities could be ascertained but the borrower is not in the national class.

9 37. Attached hereto as Exhibit D is a list of those opt-outs requests that did not comply
10 with the terms of the class notice, or the Preliminary Approval Order in that they were not
11 received by the settlement administrator, or postmarked as of February 7, 2003. Those opt-out
12 requests are not valid. Also, efforts by Levin, Papantonio, Thomas, Mitchell, Echsner & Proctor,
13 P.A. and Beggs & Lane to opt-out on behalf of all Florida residents or on behalf of an entire state
14 are improper. A putative class representative cannot opt an entire class out of a competing class
15 action. (*Hanlon v. Chrysler Corp.*, *supra*, 150 F.3d at pp. 1024-1025.)

16 II. ORDERS

17 Based on the foregoing findings and good cause appearing, it is ordered, adjudged and
18 decreed as follows:

19 A. Class Certification

20 1. For settlement purposes only, a nationwide class containing the two subclasses
21 defined below is hereby certified. The two subclasses are defined as follows:

22 a. **Credit Insurance Sub-Class:** All customers of Associates First Capital
23 Corporation, Associates Corporation of North America, and all affiliates and subsidiaries
24 of those entities as they existed prior to the Citigroup Inc. acquisition in November 2000
25 ("The Associates"), in the United States, Puerto Rico and the Virgin Islands who
26 purchased credit insurance in connection with a real estate-secured or personal loan
27 originated by The Associates between December 1, 1995 and November 30, 2000, except;

i. Consumers who purchased a credit insurance product but then canceled it and obtained a full premium refund; and

ii. Consumers who have released, individually or as part of a class, any and all claims related to credit insurance purchased in connection with loans originated by The Associates, including but not limited to such releases in connection with the North Carolina Attorney General's settlement with The Associates (publicly announced on September 6, 2001), *Darden v. Ford Consumer Finance, Inc.*, No. E-62360 (Superior Court, Fulton County, Georgia), and *Wood v. Associates*, No. CV-97-1-3977-35 (Superior Court, Cobb County, Georgia); and

b. **Refinance Sub-Class:** All customers of The Associates in the United States who refinanced with The Associates between December 1, 1995 and November 30, 2000, a real estate secured loan originated by The Associates except:

i. Customers who have released (other than through the Stipulation of Settlement in this action), individually or as part of a class, any and all claims against The Associates in connection with refinancing or alleged "flipping" of real estate secured loans originated by The Associates in connection with any state, federal or private legal action, or any other matter; and

ii. Employees of Defendants.

2. The law firms of Cotchett, Pitre, Simon, & McCarthy, LLP and Milberg Weiss Bershad Hynes & Lerach, LLP shall continue as Co-Lead Counsel for the Class. The law firms of Lieff, Cabraser, Heimann & Bernstein, LLP and Wasserman, Comden, Casselman & Pearson LLP shall continue as Co-Liaison Counsel for the Class.

B. Class Notice

3. The Court re-approves the class notice previously mailed to subclass members and the published summary notice. It determines that the notices fully and accurately informed subclass members of all material elements of the action, proposed settlement, and their alternative with respect to same, and that the notices constituted valid, due, and sufficient notice to all

1 subclass members as well as the best notice practicable under the circumstances.

2 4. Based upon the terms of the Stipulation of Settlement and the declarations attached
3 as Exhibit A hereto, the Court is satisfied that appropriate efforts to identify and locate members
4 of the Settlement Class were made.

5 **C. Final Approval**

6 5. The Court finally approves the Stipulation of Settlement and finds that it is fair,
7 adequate, and in the best interests of subclass members.

8 6. The Court orders the parties to perform their obligations pursuant to the Stipulation
9 of Settlement.

10 **D. Validity Of Opt-Outs**

11 7. The Court voids the requests for exclusions which were not received by the
12 settlement administrator or postmarked as of February 7, 2003.

13 8. The Court voids the requests for exclusions which purport to opt-out an entire class
14 or an entire state of borrowers. These law firms are Levin, Papantonio, Thomas, Mitchell,
15 Echsner & Proctor, P.A. and Beggs & Lane.

16 **E. Release of Claims**

17 9. The Second Amended Consolidated Class Action Complaint and all claims and
18 causes of action asserted therein are hereby dismissed on the merits and with prejudice, as to the
19 named plaintiffs and all subclass members other than those who have submitted timely valid opt-
20 out requests as determined by this Court's further orders. This dismissal is without cost to any
21 party except as specifically provided in the Stipulation of Settlement.

22 10. The named plaintiffs and all subclass members other than those who have
23 submitted timely valid opt-out requests as determined by this Court's further orders are bound by
24 the release provision (¶VIII) of the Stipulation of Settlement, and to the extent there provided
25 have released and discharged Defendants and all other Releasees from any and all claims as set
26 forth in paragraph VIII(A)(1) and (3) of the Stipulation of Settlement.

27 11. The Court bars and permanently enjoins the named plaintiffs and all subclass

1 members other than those who have submitted timely valid opt-out requests as determined by this
2 Court's further orders from asserting, instituting, or prosecuting, either directly or indirectly, any
3 claims released pursuant to the Stipulation of Settlement.

4 **F. Attorneys Fees and Costs**

5 12. The Court approves the award of attorneys fees and costs in the amount of \$23
6 million (plus any interest paid on the account where such funds are deposited). This award of
7 attorney's fees and costs will be paid by Defendants at the time and in the manner set forth in the
8 Stipulation of Settlement, and shall be in addition to any recovery by the Settlement Class.

9 13. Incentive awards totaling \$85,000 to those 17 plaintiffs listed in paragraph IV(F) of
10 the Stipulation of Settlement will be paid pursuant to the Stipulation of Settlement, and shall be in
11 addition to any recovery by the Settlement Class. Incentive awards of \$5,000 each to the named
12 plaintiffs in the Second Amended Consolidated Class Action Complaint (except those who are
13 already being compensated as part of the \$85,000 incentive award just mentioned) will be paid
14 from the \$25 million refinance redress fund.

15 **G. Continuing Jurisdiction**

16 14. Neither this Order Approving Class Action Settlement nor the Stipulation of
17 Settlement are an admission or concession by Defendants of any fault, omission, liability, or
18 wrongdoing. This Order Approving Class Action Settlement is not a finding of the validity or
19 invalidity of any claims in this Action or a determination of any wrongdoing by the Defendants.
20 The final approval of the Stipulation of Settlement does not constitute any opinion, position, or
21 determination of this Court, one way or the other, as to the merits of the claims and defenses of
22 the Plaintiffs, the subclass members or Defendants.

23 15. Without affecting the finality of this Order Approving Class Action Settlement and
24 Final Judgment in any way, the Court retains jurisdiction over: (1) implementation and
25 enforcement of the Stipulation of Settlement pursuant to further orders of the Court, until such
26 time as the final judgment contemplated hereby has become effective and each and every act
27 agreed to be performed by the parties hereto shall have been performed pursuant to the Stipulation

1 of Settlement, including the payments from the Credit Insurance Redress Fund and the Refinance
2 Redress Fund; (2) any other action necessary to conclude this settlement and implement the
3 Stipulation of Settlement; (3) the enforcement, construction, and interpretation of the Stipulation
4 of Settlement including, but not limited to, any dispute concerning subclass members' release of
5 claims; and, (4) the determination of validity of opt-outs.

6 16. The Court finds that no just reason exists for delay in entering this Order
7 Approving Class Action Settlement and Final Judgment. Accordingly, the Clerk is hereby
8 directed forthwith to enter this Order Approving Class Action Settlement and Final Judgment
9 pursuant to Code of Civil Procedure section 664.6.

10 IT IS SO ORDERED.

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13 DATED: 5/2/03

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RICHARD A. KRAMER

Richard A. Kramer
JUDGE OF THE SUPERIOR COURT OF
THE COUNTY OF SAN FRANCISCO